S.B. Criminal Misc. Petition NO.768/2007
(Kanhaiya Lal Vs. State)

Date of order : 22.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Shambhoo Singh, for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.

By way of filing the present misc. petition, the petitioner has prayed for correction in the order passed by this Court on 17.5.2007 in SB Criminal Revision Petition No.400/2007.

Learned counsel for the petitioner has pointed out that inadvertently in the facts narrated in the order dated 17.5.2007, Bala Ram S/o Ram Lal has been shown as accused and the petitioner has been shown as power of attorney holder of said Bala Ram S/o Ram Lal whereas the vehicle in question is registered in the name of petitioner – Kanhaiya Lal, who is accused in Criminal Case No.2/2007 and Bala Ram is brother of petitioner – Kanhaiya Lal. The said Bala Ram has filed an application being power of attorney holder of Kanhaiya Lal for releasing the vehicle in question on supardginama. Learned counsel for the petitioner has prayed that necessary correction may be incorporated in the order dated 17.5.2007.

I have heard learned counsel for the petitioner and perused the order dated 17.5.2007 as well as the record of the case.

It is obvious from the facts that inadvertently in the order dated 17.5.2007, the petitioner -Kanhaiya Lal has been shown as power of attorney holder of Bala Ram S/o Ram Lal. It is also observed in the order that challan has been filed against Bala Ram. However, in fact, challan has been filed against the petitioner – Kanhaiya Lal.

In these circumstances, the misc. petition for correction in the order dated 17.5.2007 is allowed and while maintaining the operative portion of the order dated 17.5.2007 passed in SB Criminal Revision Petition No.400/2007 in exercise of power under Section 482 Cr.P.C., the order dated 17.5.2007 is corrected as under :-

"By way of filing the present revision petition, the petitioner has prayed for quashing of order dated 26.3.2007 passed by Special Judge, N.D.P.S. Act Cases, Banswara whereby the application filed by the petitioner for releasing the Maruti Van No.RJ-03/U0108 was rejected.

According to the facts of the case, the petitioner Kanhaiya Lal has filed the revision petition through Bala Ram S/o Ram Lal - power of attorney holder. Kanhaiya Lal is registered owner of the vehicle in question and is accused in a case in which the vehicle in question was seized on 5.1.2007

by the Police Station Khamera, District Banswara in connection with NDPS case and after investigation police has filed challan against accused persons including Kanhaiya Lal, who is in judicial custody. The petitioner filed an application for releasing the vehicle in question on supardginama before the learned trial court through his power of attorney holder – Bala Ram S/o Ram Lal. The learned trial court rejected the application on the ground that the offence in which the vehicle is seized is of serious nature.

It is contended by the learned counsel for the petitioner that as per the provisions of NDPS Act, the vehicle can be confiscated after completion of trial and during the pendency of the case, the delivery of the vehicle can be given on supardginama to the registered owner. It is also submitted by the learned counsel for the petitioner that Kanhaiyalal is registered owner of the vehicle in question and he has executed his power of attorney in favour his brother – Bala Ram S/o Ram Lal. It is further contended that no useful purpose would be served to detain the vehicle in police Station. So also, as per the provisions of the NDPS Act, the vehicle can be confiscated after completion of trial. Therefore, he prays that the vehicle in question may be released to the petitioner through his power of attorney holder – Bala Ram S/o Ram Lal on supardginma.

Learned counsel for the petitioner has invited the attention of this Court towards the judgment rendered by this Court in case of Govind Singh Vs. State, reported in WLC 2007 (UC) 255 and another judgment of this Court in case of Sant Lal Vs. State, reported in 2006 (1) Cr.L.R. (Raj.) 287.

Learned Public Prosecutor vehemently opposed the prayer made by the learned counsel for the petitioner and submitted that the vehicle was seized in connection with NDPS cases and the registered owner, who is one of the accused in the said case, is in judicial custody.

I have considered the submissions made by the learned counsel for the parties and perused the impugned order as well as the judgments cited by the learned counsel for the petitioner.

In case of Sant Lal Vs. State (supra), the Coordinate Bench of this Court held in para-5 as follows :

> "5. In catena of cases, this Court has held that no fruitful purpose is served in keeping the vehicle at Police Station. Therefore, this Court has repeatedly directed that the vehicle be handed over back to the registered owner. This view has been expressed in the case of Raj Kumar Vs. Union of India, 2001 (2) RCC 1370, wherein this High Court handed the possession of the Jeep

> to the registered owner and had held that under Section 60 of the N.D.P.S. Act, the jeep can be confiscated only after the offence is proved."

In case of Govind Singh Vs. State (supra), the Coordinate Bench of this Court held in para No.6 as follows :

> "6. It has not been disputed that the registered owner of the vehicle submitted an application to release the vehicle on Supardginama and the trial Court rejected the application stating that there is no guarantee that the vehicle shall not be used subsequently in transporting contraband material. The reasoning given by the learned trial Court, in my humble opinion, cannot be said to be proper for refusing to release the vehicle on Supardginama. What is required is that proper conditions are to be imposed because no useful purpose would be served in keeping the vehicle in police custody open to sky which may cause damage to the extent that it may be of no use to anybody and also in the event of trial Court taking a decision to confiscate the vehicle, it is going to cause loss to the State because it is not going to fetch good price. The Hon'ble Apex Court, in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat (supra), has observed that it is of no use to kep the seized vehicles at police stations for a long period and it is for the Magistrate concerned to pass appropriate orders immediately by taking appropriate bond and guarantee as well as securing the return of the vehicles, if required at any point of time."

Thus, it is clear that in both the judgments cited by the learned counsel for the petitioner, it has been held that keeping the vehicle in question at police station for indefinite period is not justified and consequently, the order for releasing the vehicle during the pendency of the trial was made.

Accordingly, the revision petition is allowed. The impugned order dated 26.3.2007 is set aside and the trial Court is directed to release Maruti Van No.RJ-03/U0108 in favour of the petitioner (power of attorney holder) on interim custody on furnishing a Supardginama provided the petitioner furnishes a personal bond in the sum of Rs.2,00,000/- with one sound and solvent surety of Rs.1,00,000/- each of the satisfaction of the trial Court to produce the Maruti Van in question in Court as and when called upon to do so and also incorporating the condition therein that the petitioner will maintain the Maruti Van in good condition and shall not alter or transfer it during the pendency of the case and shall not also allow the vehicle to be used for transporting any contraband punishable under the NDPS Act. It is further ordered that in the event of using the vehicle in question for transporting contraband punishable under the NDPS Act in future, learned Public Prosecutor will be free to file application for cancellation of Supardginama."

Now the Office is directed to issue this corrected copy of the order and the record of this misc. petition be tagged along with the revision petition.

(GOPAL KRISHAN VYAS), J.

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